Supreme Court, U.S.
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86-430

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

TRANS WORLD AIRLINES and
INSURANCE COMPANY OF NORTH AMERICA,
PETITIONERS

v.

ELIZABETH DISSELL
RESPONDENT

ON WRIT OF CERTIORARI TO THE
SUPREME JUDICIAL COURT
OF THE STATE OF MAINE

PETITION FOR WRIT OF CERTIORARI

CORRECTED COPY

ATTORNEY FOR PETITIONERS:

JOHN W. CHAPMAN
Richardson, Tyler & Troubh
465 Congress Street
Portland, Maine 04101
(207) 774-5821

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(a) **Question Presented by Petition.**

Whether mere residence of an employee within the state is constitutionally sufficient to permit a state to exercise subject matter jurisdiction over a work-related injury occurring outside the state.

(b) **Parties.**

All Parties To The Proceeding Below Are Contained In The Caption.

(c) **Table of Contents and Table of Authorities.**

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(d) **Reports of Opinions Below.**

The decision of the Maine Supreme Judicial Court, sitting as the Law Court, appears in West's Atlantic Reporter as *E. Ann Dissell v. Trans World Airlines and Insurance Company of North America,* 511 A.2d 441 (Me. 1986). This decision upheld the decision of the Appellate Division of the Maine Workers' Compensation Commission, which is not officially reported, but was captioned as *E. Ann Dissell v. Trans World Airlines and Insurance Company of North America,* Appellate Division Decision No. 85-185 (decided October 25, 1985). The original decree of the Maine Workers' Compensation Commission was not officially reported, but was dated September 13, 1984. A second decree of the Maine Workers' Compensation Commission, responding to a motion for specific findings of fact and conclusions of law, was not officially reported, but was dated January 17, 1985, and bears a file number of O 51384.

(e) **Statement of Grounds for Jurisdiction.**

i. *Date of Judgment Below.*
Judgment was entered in this matter by the Maine Supreme Judicial Court, sitting as the Law Court, on June 19, 1986.

ii. *Dates of Orders for Rehearing or Orders Granting an Extension of Time Within Which to File Petition for Certiorari.*
No such orders have been requested or issued.

iii. *Statutory Provision for Jurisdiction.*
Jurisdiction is based upon 28 U.S.C. §1257(3), because the rights of the petitioner-employer are claimed under the Due Process Clause of the 14th Amendment of the Constitution of the United States.

(f) **Constitutional Provisions, Statutes and Regulations.**

As permitted by the Rule, the provisions involved shall be cited at this section, with pertinent text included in the appendix.

U.S. CONST., amend. XIV §1
28 U.S.C. §1257(c)
39 M.R.S.A. §99
39 M.R.S.A. §103-B
39 M.R.S.A. §103-C

(g) **Statement of the Case.**

Elizabeth Ann Dissell, employed as a stewardess by Trans World Airlines, ("TWA"), suffered an injury arising out of and in the course of employment on May 19, 1981 while on a TWA flight from Boston to Chicago. The actual injury occurred near Chicago, Illinois. She was originally hired by TWA in 1975 at a time when she resided in Silver Springs, Maryland. Her employment interviews occurred in Washington, D.C. and Kansas City, Missouri. She was hired and trained in Kansas City. Flight attendants for TWA are considered to be based in the city from which their flights originate and to which their flights return. At various times over ensuing years, Ms. Dissell was based in Kansas City, Boston and New York, but never in Maine. TWA does not fly within the State of Maine. It owns no property, and conducts no business in the State. None of Ms. Dissell's employment activities ever occurred within the State. TWA does list in several yellow page sections in telephone directories in the State of Maine, but a person calling the listed "800" telephone number reaches a TWA office in Kansas City, Missouri which handles any business resulting from the call.

Starting in approximately 1977, Ms. Dissell maintained a personal residence within the State of Maine. At the time of her injury, she was based in Boston. All of her flights

originated in and returned to that city. Since she maintained a residence in Maine, she would travel, on her own, from her home to work and back.

Subsequent to her injury, Ms. Dissell received workers' compensation benefits from the workers' compensation insurer for TWA, Insurance Company of North America, pursuant to the provisions of the Massachusetts Workers' Compensation Act. However, on September 7, 1983, Ms. Dissell filed a Petition for Award of Compensation with the Maine Workers' Compensation Commission ("Commission"). The Commission issued a decree dated September 13, 1984, granting the employee's Petition for Award. Pursuant to 39 M.R.S.A. §99, the employer and insurance carrier filed a motion for specific findings of fact and conclusions of law, raising the issue of whether the exercise of subject matter jurisdiction over this injury violated the U.S. Constitution. In a subsequent decree, dated January 17, 1985, the Commission specifically ruled that it had subject matter jurisdiction (Record at 94-95).

On February 4, 1985, the employer and insurance carrier appealed to the Appellate Division of the Maine Workers' Compensation Commission, again raising the issue of whether the exercise of subject matter jurisdiction over this injury was proper. In a decision dated October 25, 1985, the Appellate Division held that the exercise of subject matter jurisdiction in this case was proper on the basis of mere residence alone.

On November 13, 1985, the employer and insurance carrier filed a Petition for Appellate Review with the Maine Supreme Judicial Court, sitting as the Law Court, again raising the issue of the propriety of subject matter jurisdiction. On February 19, 1986, the Maine Supreme Judicial Court issued an order granting the Petition for Appellate Review. On June 19, 1986, the Maine Supreme Judicial Court, sitting as the Law Court, issued its decision affirming the decision below, and holding that the exercise of

subject matter jurisdiction over this injury by the Maine Workers' Compensation Commission on the basis of mere residence alone did not violate the due process rights of the employer and insurance carrier under the 14th Amendment to the U.S. Constitution. From that decision, the employer and insurance carrier petition for a Writ of Certiorari.

(h) **Argument for Allowance of Writ.**

Although this Court has previously recognized that constitutional considerations exist to limit the exercise of subject matter jurisdiction by a state workers' compensation commission over an injury which did not occur in that state, *Alaska Packers Association v. Industrial Accident Commission*, 293 U.S. 532, 55 S.Ct. 518, 79 L. Ed. 1044 (1935), *Cardillo v. Liberty Mutual Insurance Company*, 330 U.S. 469, 67 S.Ct. 801, 91 L. Ed. 1028 (1947), this Court has never decided a case in which it has set forth the minimum standards or contacts necessary to satisfy the due process requirements of the U.S. Constitution where subject matter jurisdiction is challenged. Although *International Shoe Co. v. Washington*, 326 U.S. 310, 90 L. Ed. 95, 66 S.Ct. 154 (1945) has set forth the standards of "minimum contact" in the area of *in personam* jurisdiction for many years, this Court has never issued an equivalent ruling in the area of subject matter jurisdiction.

This issue is one of significant importance, both in Maine and in other states. In Maine, the Supreme Judicial Court, sitting as the Law Court, has specifically ruled that the exercise of subject matter jurisdiction under the Maine Workers' Compensation Act is limited only by constitutional considerations. *Shannon v. Communications Satellite Corp.*, 302 A.2d 582 (1973). Several state supreme courts have been confronted with cases involving this set of facts, and have held that the employee's residence alone is not sufficient as a basis for applying its state's compensation laws. See, *DiMuro v. Industrial Commission of Arizona*,

688 P.2d 703 (Ariz. 1984). See also, *Neumer v. Yellow Freight System*, 556 P.2d 202 (Kan. 1976); *George H. Wentz, Inc. v. Sabasta*, 337 N.W.2d 495 (Iowa 1983). In these cases, however, the rationale for the courts' holding was that the state compensation act involved would preclude exercise of subject matter jurisdiction over the out-of-state injury, and the constitutional issue involved was not reached.

In his treatise on workers' compensation law, Professor Arthur Larson recognized that no state has in the past held that residence of the injured employee alone constituted sufficient grounds for the exercise of subject matter jurisdiction by a state over an out-of-state injury:

> The place of the employee's residence, although having a very real interest as the community which might have to support a disabled and uncompensated workman, has never either by judicial decision or statute been held entitled to apply its statute on the strength of the residence factor alone.

4 A. Larson, *The Law of Workmens' Compensation* §87.60 at 16-118 (1984). That principle is completely consistent with the position taken by the authors of the RESTATEMENT OF CONFLICTS, in which it has been stated:

> No case is known, however, where the State of an employee's domicile, which had no other relationship to the parties or to the employment, has awarded the employee relief under its workmens' compensation statute.

RESTATEMENT OF CONFLICTS (2d) §181.

These observations as to previous case precedents remained accurate until the Maine Supreme Judicial Court issued its decision in the present case. We are aware of no previous case in which it was held that the exercise of

subject matter jurisdiction by a state compensation commission over an out-of-state injury would be proper, where the only connection between the employment relationship and the forum state was the employee's place of residence. Thus, this Court is presented with a question of federal law which has not been, but should be, settled.

The federal question presented is important to employers which employ people who perform work or reside in several different states, and to the insurance carriers providing workers' compensation coverage to those employers. It is important for the employers and carriers when contracting for insurance coverage to be aware of the possible benefits to which the covered employees may possibly be entitled. It is reasonable for the employers and carriers to anticipate that the law of the state where employment is carried out and where an injury occurs will be applicable. It is not reasonable for employers and carriers to anticipate that coverage will be available in addition to each individual employee where he happens to reside, irrespective of the existence of any other connection between the employment relationship and the state of the employee's residence. Furthermore, as the law in this nation currently stands, all of the states which have considered the question, with the exception of Maine, have held that it would not be proper for those states to exercise subject matter jurisdiction over an out-of-state injury, when the only connection with the state was the residence of the employee. Given this recent decision by the Maine court, it now becomes more difficult for employers and insurance carriers to anticipate whether injured employees will possibly be entitled to benefits under the state compensation system wherever they live, and it becomes increasingly difficult for these employers and carriers to properly determine the premium rates which will be appropriate for workers' compensation coverage. The Maine decision, if upheld, would also foster substantial "forum shopping" nationwide.

Based upon the above arguments, Petitioners Trans World Airlines and Insurance Company of North America respectfully request that the Court grant a Writ of Certiorari, and review the decision of the Maine Supreme Judicial Court, sitting as the Law Court, in this matter.

Respectfully submitted,

JOHN W. CHAPMAN
Attorney for Petitioners

(j) **Appendix.**

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OPINIONS AND FINDINGS BY COURT WHOSE DECISION IS SOUGHT TO BE REVIEWED

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. 4158
Law Docket No. WCC-85-452

E. ANN DISSELL

v.

TRANS WORLD AIRLINES
and
INSURANCE COMPANY OF NORTH AMERICA

Argued - April 30, 1986
Decided - June 19, 1986

Before McKUSICK, C.J., and NICHOLS, ROBERTS, VIOLETTE, WATHEN and SCOLNIK, JJ.

WATHEN, J.

Trans World Airlines and its insurance carrier, Insurance Company of North America (hereinafter referred to simply as TWA), appeal from a decision of the Appellate Division of the Workers' Compensation Commission, affirming a single commissioner's award of compensation to E. Ann Dissell. TWA contends that the Commission lacked both personal jurisdiction over it and subject-matter jurisdiction over Dissell's compensation claim. Because we conclude that TWA has waived any right to review by this Court of its challenge to personal jurisdiction, we decline to consider that issue. In addition, we reject TWA's contention that the

the Workers' Compensation Commission lacked subject-matter jurisdiction. Accordingly, we affirm the award of compensation.

I.

In 1975, while a resident of Maryland, Ann Dissell applied to TWA for a job as a flight attendant. After interviews in Washington, D.C., and Kansas City, Missouri, TWA hired Dissell and assigned her to Kansas City. A TWA attendant's flights originate from and return to their assigned location.

In 1977, Dissell was assigned to Boston, Massachusetts, and she took up residence in Portland. One year later Dissell was transferred to New York for one year and was then transferred back to Boston, which remained her city of assignment until her injury in 1981. During this time, Dissell commuted from successive residence in Portland, Topsham, and Brunswick to the origination point of her flights in either Boston or New York.

On May 21, 1981, Dissell injured her back during a flight from Boston to Chicago. Immediately after the injury, she returned to her Maine residence and received medical treatment here. Dissell, who currently resides in Freeport, has not worked since her injury. Since July, 1981, she has received compensation pursuant to a signed agreement in which TWA agreed to pay benefits in accordance with the Massachusetts Workers' Compensation Act.

Dissell filed a petition for award with the Maine Workers' Compensation Commission on September 7, 1983. After conducting hearings, the single commissioner granted Dissell's petition on September 13, 1984, finding sufficient contacts to support the Commission's assertion of both personal and subject-matter jurisdiction and awarding ongoing compensation for total incapacity, with credit to TWA for payments made pursuant to the Massachusetts

agreement. In response to a motion for findings of fact and conclusions of law, the single commissioner issued a supplemental decision stating that the finding as to subject-matter jurisdiction was based on TWA's business activities in Maine and on Dissell's residence in Maine.

TWA appealed the single commissioner's decision to the Appellate Division, raising only the issue of subject-matter jurisdiction. The Division, one panelist dissenting, affirmed the single commission. In its decision, the Division rejected the single commissioner's reliance on business activities but concluded that Dissell's residence in Maine was sufficient by itself to support the Commission's assertion of subject-matter jurisdiction over her claim. TWA next filed a petition seeking review of the Division decision by this Court. Again, TWA raised only the issue of subject-matter jurisdiction. We granted the petition for appellate review.

II.

In its briefs and in oral argument before this Court, TWA contends that the single commissioner's decision must be reversed because TWA does not have sufficient contacts with Maine to support the Commission's assertion of personal jurisdiction. Both the statute and the court rule governing prosecution of an appeal from a decision of the Appellate Division require that the petition for appellate review set forth the alleged errors of which review is sought. 39 M.R.S.A. §103-C (1) (Pamph. 1985); M. R. Civ. P. 73(i)(2). In its petition for appellate review, TWA did not assert any challenge to the single commissioner's finding of personal jurisdiction or the Appellate Division's failure to reverse that finding. By failing to do so, TWA has waived any right it may have had to review by this Court of the perssonal jurisdiction issue.

III.

We have previously held that the Legislature intended the Commission's subject-matter jurisdiction to be coextensive with that allowed by the United States Constitution. *Harlow v. Emery-Waterhouse Co.*, 484 A.2d 1002, 1004-05 (Me. 1984); *Shannon v. Communications Satellite Corp.*, 302 A.2d 582, 584 (Me. 1973). Given this legislative intent, TWA's challenge to the subject-matter jurisdiction of the Workers' Compensation Commission presents a question of constitutional limitations on choice-of-law[1] imposed by

[1]The identity between the question of subject-matter jurisdiction and that of constitutional limitations on choice-of-law in the context of claims before the Workers' Compensation Commission is a feature that distinguishes that administrative agency from a trial court. The Superior Court, for example, has subject-matter jurisdiction of all cases not assigned to the exclusive jurisdiction of the District Court or the Law Court. 4 M.R.S.A. §105 (Supp. 1985-1986). If on its facts a case does not fall within the exceptions to Superior Court jurisdiction, the court is said to have subject-matter jurisdiction over the case. In the exercise of its subject-matter jurisdiction, however, the Superior Court may, consistent with the conflict-of-law provisions of Maine law, apply the law of another state to the case. Only if the Court chooses to apply Maine law does the issue of constitutional limitations on choice-of-law arise.

The Workers' Compensation Commission, on the other hand, is an administrative agency created solely to administer the Maine Workers' Compensation Act. As such, the Commission can do nothing other than apply the Maine Workers' Compensation Act to claims for compensation brought before it. Thus, cognizance by the Commission of any claim having extraterritorial aspects results in the appliction of Maine law to that claim. Under *Harlow* and *Shannon*, the Commission may take cognizance of any compensation claim unless prohibited by the federal constitution. The constitutional prohibition arises only when Commission action on a claim violates federal constitutional restrictions on the extent to which Maine may apply its law to a claim having multistate aspects. Accordingly, whether the Commission can act on a claim--i.e., has subject-matter jurisdiction over that claim--is to be determined by an examination of constitutional limitations on choice-of-law.

the Due Process Clause and Full Faith and Credit Clause of the United States Constitution. *Harlow v. Emery-Waterhouse Co.*, 484 A.2d at 1004-05.

We have previously analyzed the limits imposed upon the Commission's subject-matter jurisdiction in terms of the following relevant contacts:

> (1) place injury occurred; (2) place contract of employment was entered into; (3) place employment relationship exists or is carried out; (4) place in which the business or industry is localized; (5) place of employee's residence; (6) the place the parties might have expressly designated in their employment contract to govern (by its law) their workmen's compensation rights and liabilities.

Id. at 1004. Of these contacts, only the employee's residence in Maine is present in this case.[2] Thus, the issue in this case is whether, under the United States Constitution, Dissell's residence in Maine creates a sufficient state interest to support the Commission's assertion of subject-matter juris

[2]As noted above, the single commissioner based his finding of subject-matter jurisdiction on both the employee's residence and TWA's business activities in Maine. The Appellate Division rejected the commissioner's reliance on business activities. The Division decision noted that the existence of business activities is not among the contacts set forth by this Court as relevant to subject-matter jurisdiction and concluded that, if the single commissioner intended business activities to connote localization, one of the listed contacts, evidence in the record would not support a finding that TWA's business was localized in Maine. We accept the Appellate Division's conclusion that residence is the only relevant contact present in this case. In any event, we agree that the evidence of TWA's business activities in Maine contained in the record falls far short of demonstrating the "substantial presence" necessary to support a finding of localization. See *Shannon v. Communications Satellite Corp.*, 302 A.2d at 586.

diction over her claim.

The federal constitution does not bar a state from applying its law to an occurence so long as that state has "a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair." *Allstate Insurance Co. v. Hague,* 449 US. 302, 313 (1981). However, the two applicable constitutional provisions--the Due Process Clause and the Full Faith and Credit Clause--present distinct inquiries. The due process analysis is directed toward fairness to the litigants before the court, while full faith and credit analysis focuses on infringement upon the sovereignty of sister states. *Id.* at 320 (Stevens, J., concurring in judgment); *Harlow v. Emery-Waterhouse Co.,* 484 A.2d at 1005.

As the Supreme Court has pointed out, the state where an employee lives has a considerable interest in ensuring adequate compensation for work-related injuries because "it is there that he is expected to return; and it is on his community that the impact of the injury is apt to be most keenly felt." *Crider v. Zurich Insurance Co.,* 380 U.S. 39, 41 (1965). *See also Cardillo V. Liberty Mutual Insurance Co.,* 330 U.S. 469, 476 (1947) (state has "legitimate interest in providing adequate workmen's compensation measures for its residents"); *Alaska Packers Association v. Industrial Accident Commission,* 294 U.S. 532, 542 (1935) (danger that an injured employee might become a public charge is a matter of "grave public concern to the state"). In the present case, Ann Dissell became a Maine resident years before her injury, and in fact, Maine was her residence at the time of her injury and has remained such ever since. The existence of Maine's interest in ensuring that the burden resulting from Dissell's work-related injury falls upon her employer rather than upon her community precludes any contention that application of Maine law to Dissell's injury is arbitrary. *Cf. Delano v. City of South*

Portland, 405 A.2d 222, 225 (Me. 1979) (purpose of Workers' Compensation Act to transfer burden of industrial injuries from individual to employer). In addition, we perceive no fundamental unfairness in requiring TWA to compensate Dissell according to the law of the state in which she resides and upon which she would be dependent for support should compensation for her injury prove inadequate. We conclude that Dissell's residence in Maine constitutes a legitimate and substantial interest sufficient to overcome any due process limitation upon the application of Maine law to her claim.

On the full faith and credit question, the parties have not identified any state with such an overriding interest in the present case that applicaiton of Maine law constitutes an infringement upon that state's sovereignty.[3] Indeed, this case presents a situation in which relevant contacts are widely dispersed, with no one state having a conglomeration of contacts. Dissell received her injury on an airplane, and the record does not reveal over which state the plane was flying when the injury occurred or even if the plane was over the United States at the time. Presumably, the contract for hire was executed in Kansas City, Missouri, but again the record does not specifically determine the

[3]To apply Maine law consistently with the requirements of the Full Faith and Credit Clause, it is not necessary that Maine possess a greater interest in the litigation than any other state. *See Carroll v. Lanza*, 349 U.S. 408, 411-414 (1955) (abandoning the weighing of interests analysis applied to a full faith and credit challenge in *Alaska Packers Association v. Industrial Accident Commission*, 294 U.S. at 549-50). Rather, a state may apply its own law whenever it has a valid interest in litigation and such an application does not reflect "hostility to the public Acts" of another state, *Carroll v. Lanza*, 349 U.S. at 413, or "create a substantial threat to our constitutional system of cooperative federalism," *Nevada v. Hall*, 440 U.S. 410, 424 n.24 (1979). *See Allstate Insurance Co. v. Hague*, 449 U.S. at 322-23 & n.10.

place of contract. The employment relationship was carried our partly in Massachusetts but partly in numerous other states as well. We conclude that no single state is so connected with the occurrence giving rise to the instant litigation that application of Maine law would arbitrarily or unfairly infringe upon that state's sovereign power.

Having determined that neither the Due Process Clause nor the Full Faith and Credit Clause[4] bars application of Maine law to Dissell's compensation claim, we conclude that the Workers' Compensation Commission possessed subject-matter jurisdiction to award compensation in this case.

The entry is:

Decision of the Appellate Division affirmed.

[4]As noted above, Dissell has received compensation pursuant to an agreement executed in accordance with the Massachusetts Workers' Compensation Act. A copy of this agreement was introduced as an exhibit during a hearing before the single commissioner. Neither the agreement nor any other evidence in the record reflects that the agreement was ever approved by the Massachusetts Industrial Accidents Board. Although under Massachusetts law an approved agreement conclusively determines entitlement to compensation, *Kareske's Case*, 250 Mass. 220, 145 N.E. 301 (1924), an agreement is ineffective unless approved by the board. *Conlon v. City of Lawrence*, 299 Mass. 528, 13 N.E.2d 425 (1938). Because the agreement in this case was never approved, and thus never became conclusive under Massachusetts law, we need not address whether the full faith and credit that must be accorded to final judgments and awards of foreign tribunals, as opposed to foreign statutes, would bar the Maine Commission from awarding compensation in the present case. *See Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980).

It is ordered that the employer pay to the employee $550 for his counsel fees plus his reasonable out-of-pocket expenses for this appeal.

. . . . . .

All concurring.

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OPINIONS AND FINDINGS BY OTHER COURTS OR ADMINISTRATIVE AGENCIES BELOW

STATE OF MAINE
WORKERS' COMPENSATION
COMMISSION

APPELLATE DIVISION
Decision No. 85-185

E. ANN DISSELL
(Appellee - Employee)

v.

TRANS WORLD AIRLINES
(Appellant - Employer)

and

INSURANCE COMPANY OF NORTH AMERICA
(Insurer)

Argued: July 16, 1985
Decided: October 25, 1985

BEFORE: Commissioners Devoe, Clapp and Studstrup
BY: Commissioner Studstrup

The employer appeals from a decision of the Commission entered on September 13, 1984, supplemented by findings of fact and conclusions of law dated January 17, 1985, which granted the employee's Petition for Award of Compensation. The facts surrounding the employee's injury are not disputed. The employee, a Maine resident at all times pertinent to the case, was employed by Trans World Airlines as a cabin attendant when she injured her back and legs on March 12, 1981. The injury occurred during a flight from Boston to Chicago. The employee has

received workers' compensation benefits under the Massachusetts statute by agreement, but now petitions for coverage under the Maine Act.

The primary issue presented to the Commission and on appeal concerns the jurisdiction of the Commission. In its decree of September 13, 1984, the Commission concluded it had personal jurisdiction over the employer based on the employer's business contacts with the State of Maine. In its findings of fact and conclusions of law, the Commission also concluded that it had subject matter jurisdiction over this controversy based upon the employee's residence in Maine and the employer's business activities in Maine. The employer appeals solely on the issue of subject matter jurisdiction. We deny the appeal and sustain the decision below, though on a narrower basis than that by the Commission.

The two stated factors leading the Commission to find subject matter jurisdiction were the undisputed residence of the employee in Maine and the employer's business activities here. These business activities appear to consist of the solicitation of Maine passengers through advertising and listing of information and reservation numbers in Maine telephone books. No other evidence of business activities was presented.

The controlling case in Maine on the issue of subject matter jurisdiction in workers' compensation proceedings is *Shannon v. Communictions Satellite Corporation*, 302 A.2d 582 (Me. 1973). In that case the Law Court listed six factors which are to be considered in determining whether subject matter jurisdiction exists. It is clear in the present case that many of these factors, such as the location of the injury and the employment relationship, do not assist in establishing jurisdiction in Maine. Only the residence of the employee and possibly localization of the employer in Maine among the six *Shannon* factors are relevant to this case.

The commissioner mentioned the employer's "business activities" without using the term "localization", so it is difficult to determine whether it concluded that these terms were synonymous or whether it intended that "business activities" should be considered as a seventh factor not mentioned in *Shannon*. Analyzed interms of "localization", we do not feel that the limited business activities of the employer in Maine meet the test. The business activities may have constituted sufficient minimum contact with the state to establish personal jurisdiction over the employer (*International Shoe Co. v. Washington*, 326 U.S.310 (1945); *Worldwide Volkswagen Corporation v. Woodson*, 444 U.S.286 (1980); *Labbe v. Nissen Corporation*, 404 A.2d 564 (Me. 1979)), but they do not constitute the type of physical and business presence in the state necessary to conclude that the employer is "localized" here.

Analyzed as a factor in addition to localization, it appears the commission concluded that residence of the employee plus some other factor, even if that factor was as tenuous as advertising and telephone listings, would be sufficient to establish subject matter jurisdiction. However, we need not go this far in our analysis in light of our holding that residence of the employee in Maine is sufficient in itself to establish subject matter jurisdiction.

The rational for our conclusion that the employee's residence in Maine is sufficient by itself to confer subject matter jurisdiction is the same as the rational set forth in *Frank D. Fournier v. Riley Stoker Corporation*, No. 85-07 (Me. Workers' Comp. Comm'n App. Div., January 7, 1985); appeal not accepted by the Law Court on April 3, 1985. The essence of this reasoning stems from the direction contained in *Shannon, supra*, that we are to assert the state's jurisdiction to the "... fullest scope consistent with federal due process limitation." 302 A.2d 584. The test for due process bounds with regard to subject matter jurisdiction

is whether the issue is within the reasonable scope of the state's regulatory power. The State of Maine's continuing interest in the welfare of its citizens, as reflected in the purpose of the Workers' Compensation Act, presents a reasonable basis for regulation through the Act. Therefore, workers' compensation claims of Maine residents, even with regard to industrial injuries which have no other contact with the State of Maine, are within the Commission's subject matter jurisdiction.

It might be argued that the employee's welfare is already being served by her receipt of workers' compensation benefits under the Massachusetts program and that these benefits are adequate to address Maine's interests in the employee's welfare. This argument would miss the point of Maine's interest in the continuation of these benefits and its interest in making certain that the employee receives that level of benefits which our legislature had determined best protect the welfare of our residents. We note that the employee returned to Maine immediately after her accident, received all of her medical attention in this state, and, as of the date the evidence closed, remained under medical treatment in Maine. If the Massachusetts workers' compensation benefits were discontinued or proved to be inadequate to meet the employee's needs, it would most likely by Maine sources of assistance which the employee would be forced to call upon. As stated by Professor Larson, "The place where the employee or his dependents reside also has an interest of specific relevance to compensation law; for if the employee is left uncompensated or undercompensated, it is his local community that will have to bear the expense of direct assistance and relief." 4 Larson, *Workers' Compensation Law*, §86.34.

The employer is entitled to credit for all payments made under the Massachusetts program, but Maine's continued interest in the employee's welfare is clear this claim and is within the reasonable scope of the commission's regulatory

power.

The entry is:

> Appeal denied.
> Decision affirmed.
>
> It is further ordered that the employer pay to the employee $550.00 for her counsel fees plus her reasonable out-of-pocket expenses for this appeal.

Chairman Devoe, Dissenting.

I must respectfully dissent from my colleague's majority decision. I would reverse the commissioner's decision on at least one ground.

I entirely agree with the majority's factual characterization of this case. There are no facts, but for the employee's residence in Maine, which confer subject-matter jurisdiction upon the Commission. There is no support in these facts for the five remaining *Shannon* factors, *supra* at 585.

Even the residence factor, factually, significantly differs between the employees in *Shannon* and this case. In *Shannon*, the employee had been hired and had worked in Maine for more than three years before being temporarily assigned to work in the Kingdom of Thailand. The employee in this case did not live in Maine at the time of hire. She did not move to Maine for employment-related reasons. Shannon continued to maintain his residence in Maine while on temporary duty in Thailand. Shannon did not apply for or receive workers' compensation beneifts under the laws of another State or from Thailand. These factors cannot be ignored when weighing what role residence, as much as other information, may by important in determining how many of the "*Shannon* six" are necessary before

jurisdiction can be conferred in every case. When it has been demonstrated, *inter alia,* that the claimant has applied for and received workers' compensation benefits under the laws of another State, the residence factor, standing alone, should be insufficient from the governmental interest standpoint to confer subject-matter jurisdiction on the domicile State.

Concededly, *dictum* in *Shannon, supra* at 486, characterized as "doubtful" the correctness of that commissioner's ultimate conclusion that residence alone was insufficient to confer subject-matter jurisdiction. However, the only holding in *Shannon,* at 586, was that the commissioner had misconstrued the legal meaning of "localization".[1] The case before this panel has nothing to do with localization. While *Shannon* set forth which factors enter into the subject-matter jurisdiction determination, it does not compel the decision of this majority. I would not have held with the majority in *Fournier v. Riley Stoker Corp.,* No. 85-07 (Me. Workers' Comp. Comm'n. App. Div., January 7, 1985).

I also believe that the Commission did not have personal jurisdiction over the employer in this case. In that respect I adhere to the Division's decision in *Wadsworth v. Perini Power Constructors Co.,* No. 84-57 (Me. Workers' Comp. Comm'n. App. Div., June 29, 1984) which requires some minimum business contacts between the employer and this State before the Commission can exercise personal jurisdiction over the respondent employer. The employer in this case had no more business contacts with Maine

[1]Indeed, the Court, by reference to Professor Larson at §§86.00, 86.10 and 86.33 and to the Second Restatement §181, recognized that there was no known case where residence alone had been considered sufficient to confer subject-matter jurisdiction upon the domicile State's Workers' Compensation Agency.

than did the employer in *Wadsworth*. The employer did not file an answer to the petition or appear at evidentiary hearings. Once the summary decision was sent to the parties, however, the employer did move for more specific findings of fact and conclusions of law and filed this appeal. By failing to raise the issue of personal jurisdiciton on either occasion the employer has waived its lack-of-peronal-jurisdiction defense.

For these reasons I would reverse the decision of the hearing commissioner and remand with instruction to order a denial of the petition for award of compensation.

.....

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STATE OF MAINE
WORKERS' COMPENSATION COMMISSION
85 PREBLE STREET
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JAN. 17, 1985

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P.O. Box 15340
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Re: 0 51384

This decision may be appealed to the Appellate Division of the Workers' Compensation Commission within 20 days after receipt of notice of filing. See 39 MRSA §103-B.

.....

E. ANN DISSELL
(Employee)

vs.

TRANS WORLD AIRLINES
(Employer)

and

INSURANCE COMPANY OF NORTH AMERICA
(Insurer)

MOTION FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW were timely filed with the Commission.

The employer has moved for findings of fact and conclusions of law challenging the exercise of subject matter jurisdiction in this case. There are no facts in dispute in this case. The evidence submitted by the employee in testimony and through exhibits is found to be fact and is incorporated herein. Based upon the above factual findings, I conclude as a matter of law that the Maine Workers' Compensation Commission has subject matter jurisdiction over the case based upon the employee's residence and based upon the business activities of the employer which have occurred within the State of Maine.

WHEREFORE, it is hereby ordered that the employee is awarded total compensation from May 12, 1981 to the present and continuing. The employer shall be credited with all voluntary payments made pursuant to the Massachusetts' Workers' Compensation Act. The employee is further awarded interest pursuant to 39 M.R.S.A. §72 on the net amount due, if any. Said compensation shall be adjusted according to the terms of the Act.

So Ordered.

Portland, Maine

Dated: Jan. 17, 1985

WORKERS' COMPENSATION COMMISSION

Suzanne E. K. Smith
COMMISSIONER

A04DISSE.FPC

E. ANN DISSELL
(Employee)

vs.

TRANS WORLD AIRLINES
(Employer)

and

NO RECORD OF COVERAGE
(Insurer)

PETITION FOR AWARD OF COMPENSATION ON ACCOUNT OF AN INJURY SUSTAINED ON May 12, 1981 by E. Ann Dissell while employed by Trans World Airlines; filed with the Commission on September 8, 1983.

On May 12, 1981, while working as a cabin attendant in the employ of Trans World Airlines in flight on route from Boston, Massachusetts to Chicago, Illinois, the employee received a personal injury to her back, arising out of and in the course of her employment. Her average weekly wage was $318.46. As a result of the injury, she has been totally incapacitated since May 12, 1981. She was a Maine resident at the time of the injury and has remained so. TWA has sufficient contacts with the State of Maine to support Maine's exercise of personal jurisdiction over it.

WHEREFORE, it is hereby ordered that the employee is awarded total compensation from May 12, 1981 to the present and continuing. The employer shall be credited with all payments made pursuant to the Massachusetts Workers' Compensation Act. The employee is further awarded interest pursuant to 39 M.R.S.A. Section 72 on the net amount due, if any. Said compensation shall be adjusted according to the terms of the Act.

So Ordered.

Augusta, Maine

Dated: 9/13/84

WORKERS' COMPENSATION
COMMISSION

Suzanne E. K. Smith
COMMISSIONER

I12DISSE.DBM

JUDGMENT OR DECREE APPEALED FROM

The entire text of all decisions, opinions, findings and conclusions, including portions constituting the judgment, have been reproduced above. No rehearings were held, either in Superior Court or before the Law Court.

The caption of the case before the Law Court was:

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. 4158
Law Docket No. WCC-85-752

E. ANN DISSELL

V.

TRANS WORLD AIRLINES

and

INSURANCE COMPANY OF NORTH AMERICA

Argued - April 30, 1986
Decided - June 19, 1986

Its Judgment was:
Decision of the Appellate Division Affirmed

In the Appellate Division of the Workers' Compensation Commission, the caption was:

STATE OF MAINE
WORKERS' COMPENSATION
COMMISSION

APPELLATE DIVISION
Decision No. 85-185

E. ANN DISSELL
(Appellee - Employee)

V.

TRANS WORLD AIRLINES
(Appellant - Employer)

and

INSURANCE COMPANY OF NORTH AMERICA
(Insurer)

Argued: July 16, 1985
Decided: October 25, 1985

Its judgment was:
Appeal Denied, Decision Affirmed

TEXT OF CONSTITUTIONAL PROVISIONS AND STATUTES CITED IN JURISDICTIONAL STATEMENT

U.S. CONST., amend. XIV §1 provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 28 U.S.C. §1257 provides:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

Title 39 MRSA Section 99 provides in pertinent part:

The commissioner shall, upon the request of a party made as a motion within 20 days after notice of the decision, or may upon its own motion find the facts specially and state separately its conclusions of law thereon and file the appropriate decision if it differs from the decision filed before the request was made. Those findings, conclusions and revised decision shall be filed in the office of the commission, and a copy thereof attested by the clerk of the commission shall be mailed forthwith to all parties interested. The running of the time for appeal, including certification and presentation to the Appellate Division under section 103-B, is terminated by a timely motion made pursuant to this section, and the full time for this appeal commences to run and is to be computed from the filing of those findings, conclusions and revised decision.

Title 39, MSRA Section 103-B provides in pertinent part:

1. Procedure. An appeal shall be taken from the commission decision by filing a copy of the decision, order or agreement, with the division within 20 days after receipt of notice of the filing of the decision by the commission or commissioner.

Any party in interest may present copies of any order, decision or agreement to the clerk of the division.

The failure of an appellant who timely notifies the division of his desire to appeal to provide a copy of the decision, order or agreement appealed from shall not affect the jurisdiction of the division to determine the appeal on its merits unless the appellee shows substantial prejudice from that failure.

This section shall apply to cases now pending before the appellate division and to cases hereafter filed.

2. Basis. There shall be no appeal upon questions of fact found by the commission or by any commissioner.

3. Action. The division, after due consideration, may reverse or modify any decree of the commission and shall issue a written decision. The written decision of the division shall be filed with the commission and mailed to the parties or their counsel.

Title 39 MRSA §103-C provides, in pertinent part:

1. Procedures. Any party in interest may present a copy of the decision of the division to the clerk of the Law Court within 20 days after receipt of notice of the filing of the decision by the division. Within 20 days after the copy is filed with the Law Court, the party seeking review by the Law Court must file a petition seeking appellate review with the Law Court, setting forth a brief statement of the facts, the error or errors of law which are alleged to exist and legal authority supporting the position of the appellant.

2. Rules. The Law Court shall establish and publish procedures for the review of petitions for appellate review of decisions of the division.

3. Discretionary appeal; action. Upon the approval of 3 or more members of a panel consisting of no less than 5 justices of the Law Court, the petition for appellate review may be granted. If the petition shall be considered on written briefs only.

If the petition for appellate review is granted, then the clerk of the Law Court shall notify the paties of the briefing schedule consistent with the Maine Rules of Civil Procedure, and in all respects the appeal before the Law Court shall be treated as an appeal in an action in which equitable relief has been sought. The Law Court may, after due consideration, reverse, modify or affirm any decision of the division.